

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

12471

Executive Registry
74-2973

26 SEP 1974

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

It appears that H.R. 12471, the Freedom of Information Act amendments now in conference in the Congress, may be approved by the Congress. In that event, I respectfully urge your veto of this bill.

I have serious concern over the interjection of the courts into the classification process. The courts are ill equipped to make the judgments of what matters are classified. The courts themselves have consistently so indicated and have pointed to the ability of the Executive branch to bring to bear all the necessary knowledge to make proper judgments on matters of classification. The courts have acknowledged that the Executive may have other highly classified information derived from numerous sources, including the results of intelligence efforts, which are not available to the courts.

I strongly support the position you took on court review in your letter to the House and Senate Conferees of 23 August 1974. I also agree that court review could be acceptable under certain circumstances if the court upon review determines that the classification had been arbitrary and capricious.

In urging a veto of this bill, I am mindful of the responsibility placed on me by the Congress in the National Security Act to protect "intelligence sources and methods from unauthorized disclosure." By law, therefore, that responsibility rests on me, and I do not believe that I can effectively and securely conduct intelligence activities if a court after a de novo review can substitute its judgment for mine as to what information requires protection. Our current difficulties in the courts with Mr. Victor Marchetti, an ex-employee, have clearly shown us the problems of acquainting courts with the subtleties and sensitivities of the intelligence process.

There are other provisions in this bill which I feel are most unsatisfactory. For example, the bill would require Agency responses within 10 days. Experience has shown that the scope of requests under the Freedom of Information Act generally requires far greater lengths of time to do a proper search and subsequent review. Also, the bill provides for sanctions to be administered by the Civil Service Commission where employees are charged with improperly withholding information. In my view this would be in derogation of the command responsibilities of the heads of departments and agencies.

While I am fully in agreement with the concept that the Executive branch should make available as much information as possible to the American public, I do not feel that this bill serves that objective in an appropriate fashion. Consequently, I urge your veto of this bill if it is approved by the Congress.

Respectfully,

/s/ W. E. Colby

W. E. Colby
Director

OGC:JSW:sin (9/25/74)

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